

1 Gustavo T. Villanueva (PROSE)
 2 1301 Cougar Creek Drive
 3 Patterson, California 95363
 4 U.S.A.
 5 (408) 655-8990

DEFAUL T ENTERED
 2/20/2008
 RICHARD W. WIEKING, CLERK

6 Plaintiff
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9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

By *J.W. Spriggs*
 Deputy Clerk

Filed
 FEB 19 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

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14 Gustavo T. Villanueva,) No. C07 05721 JW
 15 Plaintiff,)
 16)
 17 v.) REQUEST FOR
 18) ENTRY OF DEFAULT
 19 Condoleezza Rice as Secretary of the) CLERK OF THE COURT
 20 United States Department of State,)
 21 Maura Harty, Consuelo Pachon,)
 22 and Kevin Lewis Spriggs)
 23 Defendants.)

24 1. The Plaintiff respectfully requests the Clerk of the Court to make an
 25 entry of default on the Docket for case No: C07-05721 JW. Plaintiff
 26 already made a similar request in writing to this court on January 28th,
 27 2008, with the title "REQUEST FOR DEFAULT JUDGMENT AND
 28 PERMANENT INJUNCTION." However, the request made on
 29 January 28th was sent to Honorable James Ware as a motion rather
 30 than as a request to the clerk of the court—such request was denied by
 31 the judge because the Docket did not reflect an entry of default against
 32 any of the Defendants by the Clerk of the Court.
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34 2. The Plaintiff, acting as *pro se*, apologizes for not being clear on his
 35 prior request and therefore resubmits his request for entry of default to
 36 the Clerk of the Court and will resubmit in a different document a re-
 37 consideration for his motion for default judgment.
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1 3. Federal Rules of Civil Procedure ("FRCP"), Rule 55(a) states that the
2 Clerk of the Court shall enter a party's default if such party against
3 whom a judgment for affirmative relief is sought has failed to plead or
4 otherwise defend as provided by the Federal Rules of Civil Procedure
5 and that fact is made to appear by affidavit or otherwise.

6 4. Plaintiff affirms¹ that Defendants failed to plead or otherwise defend
7 by the timeline established by the Clerk of the Court the Plaintiff's
8 Amended Action to Establish U.S. Citizenship ("Amended Action" or
9 "Action") filed in this court. Defendants failed to comply with FRCP,
10 Rule 12(a)(3)(A) and Rule 12(a)(3)(B) which establishes the timeline
11 imposed to a federal agency to plead or otherwise answer the complaint
12 filed by the Plaintiff.

13 5. The Plaintiff affirms that each Defendant mentioned in the Amended
14 Action was properly served with a Summons issued by the Clerk of
15 this Court on November 20th, 2007; who imposed a 60 day timeline to
16 either file an answer to the action or enter a motion to dismiss. The
17 timeline expired on January 25th, 2008. Defendants did not file a
18 statement, motion or answer to the amended Action before January
19 25th, 2008. Defendants entered a motion to dismiss 17 days after the
20 dateline imposed by this court on February 11th, 2008, which is 77
21 days after the summons issued by this court on the amended Action or
22 84 days from the summons issued to each Defendant on the original
23 Action.

24 6. The Plaintiff states that:

25 1. Defendant Dr. Condoleezza Rice was served and received
26 Summons from this court to answer the Amended Action on
27 November 23, 2007 in Washington, DC 20520;
28 2. Defendant Maura Harty was served and received Summons
29 from this court to answer the Amended Action on November
30 23, 2007 in Washington, DC 20520;
31 3. Defendant Consuelo Pachon was served and received Summons
32 from this court to answer the Amended Action on November
33 26, 2007 in Washington, DC 20037;

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¹ Plaintiff made this assertion on writing on January 28th, 2008.

- 1 4. Defendant Kevin Lewis Spriggs was served and received
- 2 Summons from this court to answer the Amended Action on
- 3 November 23, 2007 in Washington, DC 20524;
- 4 5. The United States Attorney's Office in San Jose, California was
- 5 served and received copies from the Summons issued to each
- 6 Defendant on November 27, 2007 in San Jose, CA 95113;
- 7 6. The United States Attorney General was served and received
- 8 copies from the Summons issued to each Defendant by this
- 9 Court on December 14th, 2007 in Washington, DC 20530; and
- 10 7. The Office of the United States Attorney, Civil Clerk, in San
- 11 Francisco, California was served and received copies from the
- 12 Summons issued to each Defendant by this Court on December
- 13 13th, 2007 in San Francisco, CA 94102.
- 14
- 15 7. Proofs of Service by Mail or Affidavits of Service were properly filed
- 16 in this Court on December 13th, 2007 and January 2nd, 2008.
- 17
- 18 8. The Plaintiff argues that none of the Defendants is an infant,
- 19 incompetent person or enlisted in the Uniform Service of United
- 20 States Military serving overseas. Defendants do not enjoy from the
- 21 protections given by the Uniformed Services Employment and
- 22 Reemployment Rights Act ("USERRA") of 1940 (see 50 U.S.C.
- 23 appen. §501 *et seq.*).
- 24
- 25 9. Because Defendants fall in a special category within Rule 55 of
- 26 FRCP, the Plaintiff also affirms that pursuant to Federal Rules of Civil
- 27 Procedure, Rule 55(e), a judgment against the United States "shall be
- 28 entered against the United States or an officer or agency thereof" if
- 29 "the claimant establishes a claim or right to relief by evidence
- 30 satisfactory to the court." The Plaintiff argues that his claim of
- 31 citizenship is based on an official birth certificate that has no issues of
- 32 fact and that the law applied to him to invalidate such certificate has
- 33 an issue of law.
- 34
- 35 10. Therefore, the Plaintiff asserts that he has proven that he was born in
- 36 territory of the United States and therefore a citizen of the United
- 37 States; such proof has been provided through his official U.S. birth
- 38 certificate which is one of the enclosures contained in Exhibit A.
- 39 Plaintiff has asserted his fact of birth through a claim successfully
- 40 asserted in court proceedings before a United States Superior Court

1 with the proper jurisdiction to establish the facts of the Plaintiff's birth
2 and that concluded that he is indeed an individual born in the United
3 States. The Superior Court of California has jurisdiction in
4 establishing such facts and authority has been conferred to the
5 Superior Court by Federal and State legislation.

6

7 11. The core of this Action is focused in whether an Official Birth
8 Certificate issued by the agency entrusted to issue a birth certificate,
9 which is commonly used to prove identity and citizenship, can be
10 invalidated by another agency that is entrusted to issue passports and
11 not birth certificates (question of fact). This action also focuses on
12 whether the Defendants have authority to overturn decisions of fact
13 made by the Superior Court of California (question of law and
14 jurisdiction).

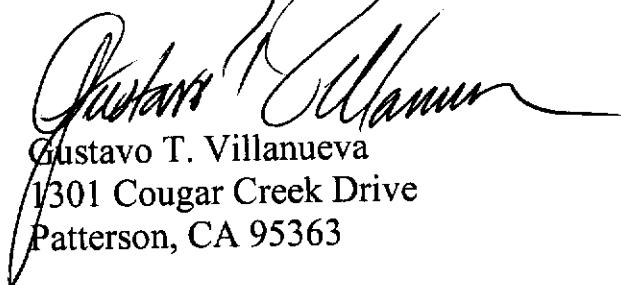
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16 12. WHEREFORE, the Plaintiff respectfully requests the Clerk of this
17 Court to make an Entry of Default on the docket to reflect that
18 Defendants did not comply with the appropriate regulations contained
19 in the Federal Rules of Civil Procedure.

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21 13. I, the Plaintiff, GUSTAVO T. VILLANUEVA, declare under penalty
22 of perjury under the laws of the State of California and the laws of the
23 United States of America that the foregoing is true and correct.

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25 RESPECTFULLY SUBMITTED,

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Gustavo T. Villanueva
1301 Cougar Creek Drive
Patterson, CA 95363
657 Gridley Street
San Jose, CA 95127

DATED: 19FEB2008

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CERTIFICATE OF SERVICE

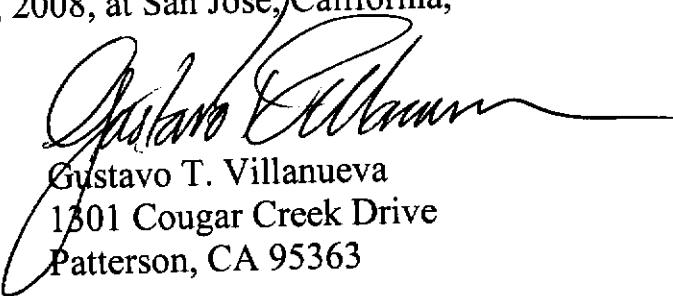
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9
10 The undersigned hereby certifies that he is an employee of the United States
11 Navy Reserve and is a person of such age and discretion to be competent to
12 serve papers. The undersigned further certifies that he is causing a copy of
13 the following:

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REQUEST FOR ENTRY OF DEFAULT

17
18 to be served this date upon the Defendant's counsel in this action by sending
19 a true copy thereof through electronic mail as agreed by the parties to Ms.
20 Claire Cormier (USACAN) at her email address
21 [Claire.Cormier@usdoj.gov].

22
23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct.

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27 Executed this 19th day of February, 2008, at San Jose, California,



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Gustavo T. Villanueva
1301 Cougar Creek Drive
Patterson, CA 95363

657 Gridley Street
San Jose, CA 95127

DATED: 19FEB2008

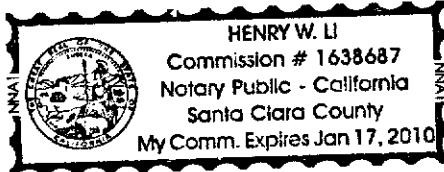
CALIFORNIA JURAT WITH AFFIANT STATEMENT

See Attached Document (Notary to cross out lines 1-6 below)
 See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of SANTA CLARA

Subscribed and sworn to (or affirmed) before me on this

19TH day of FEBRUARY, 2008, by

(1) GUSTAVO T. VILLANUEVA,
 Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (.)

(and)

(2) _____
 Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)Signature Gustavo T. Villanueva

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached DocumentTitle or Type of Document: REQUEST FOR ENTRY DEFAULTDocument Date: 2/19/2008 Number of Pages: 5

Signer(s) Other Than Named Above: _____

RIGHT THUMPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMPRINT OF SIGNER #2
Top of thumb here